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1 student; the provision of a free, appropriate public education
2 to a student; or the placement of a student in an alternative
3 educational setting; and

4 WHEREAS, the state is responsible for the training and
5 payment of due process hearing officers and, subsequently, for
6 the procedure used in the hearings; and

7 WHEREAS, school districts pay for due process hearing
8 officers who conduct due process hearings, regardless of
9 whether the school district is ultimately found to have
10 violated the federal Individuals with Disabilities Education
11 Act or the complaint is found to be without merit; and

12 WHEREAS, currently, due process hearings generally last at
13 least three days and have lasted as long as ten days; and

14 WHEREAS, school districts are often left with just part of
15 the last day of the hearing to present their cases, because
16 petitioners are allowed the majority of hearing time to present
17 their cases, often questioning individual teachers and staff
18 for numerous hours during a hearing; and

19 WHEREAS, school districts bear all the administrative
20 costs of holding the hearing, including costs such as payments
21 to the due process hearing officer; the wages of a court
22 reporter; payments for hearing facilities; and payment of the
23 school district's attorney fees, which costs increase
24 dramatically with the length of the hearing; and

25 WHEREAS, the average cost of a hearing in the largest

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1 school districts in the state can be three times that of the
2 state average hearing cost; and

3 WHEREAS, in addition to due process hearing costs, school
4 districts bear the costs of having teachers, social workers,
5 therapists and other educational professionals absent from
6 their jobs so that they may prepare for and testify in lengthy
7 due process hearings, hearings in which they often have to wait
8 for hours before testifying due to a lack of structure in the
9 hearing process and witness presentations; and

10 WHEREAS, a parent may bring multiple claims in a year and
11 generate multiple due process hearings on behalf of the same
12 student; and

13 WHEREAS, the public school insurance authority may limit
14 coverage of the costs of due process hearings to one hearing
15 per year per plaintiff and, therefore, may not cover the costs
16 of multiple due process hearings required for the same student
17 in the same year; and

18 WHEREAS, unnecessarily extended, unstructured and
19 expensive hearings are a drain on the financial resources of
20 special education departments and school districts, depleting
21 money that might otherwise be used to provide services to
22 students and support to teachers and staff; and

23 WHEREAS, in many cases, school districts agree to
24 financial settlements to avoid hearings that would increase the
25 financial and structural pressure on them, and plaintiffs

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1 recognize that school districts may prefer to save time and
2 money by settling complaints rather than incur the expense and
3 lost time resulting from due process hearings, even though a
4 settlement means that the resolution of the issue is not based
5 on the facts or law bearing on the individual case;

6 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE
7 STATE OF NEW MEXICO that the legislative education study
8 committee be requested to collaborate with school districts and
9 the public education department to study methods of
10 streamlining due process hearings, thereby increasing their
11 efficiency, decreasing the time devoted by school districts and
12 personnel to them and reducing their fiscal impact on special
13 education budgets, and to study the coverage of due process
14 hearings provided by the public school insurance authority and
15 the extent and effect of its limitations on coverage of those
16 hearings; and

17 BE IT FURTHER RESOLVED that the legislative education
18 study committee be requested to make the public education
19 department aware of the strategies identified; and

20 BE IT FURTHER RESOLVED that the public education
21 department be requested to review and implement the strategies
22 identified by the study resulting from this memorial; and

23 BE IT FURTHER RESOLVED that the public education
24 department work with the legislative education study committee
25 to identify an implementation plan for the strategies developed

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1 and present those strategies and the subsequent implementation
2 plan to the legislature for review by November 2006; and

3 BE IT FURTHER RESOLVED that the public education
4 department and the legislative education study committee
5 identify the costs and seek appropriations or changes in law,
6 where necessary, to implement the strategies agreed upon; and

7 BE IT FURTHER RESOLVED that copies of this memorial be
8 transmitted to the secretary of public education and to the
9 chair and the director of the legislative education study
10 committee.

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